

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

§

§

v.

§

§

NICK C. TRAN

§

CAUSE NO. 1:08CR66-LG-JMR-3

ORDER DENYING TRAN'S SECOND MOTION TO STAY

BEFORE THE COURT is Nick Tran's Motion to Stay Proceedings Pending Interlocutory Appeal [350]. Upon reviewing the Motion and the applicable law, the Court finds that the Motion should be denied.

DISCUSSION

This cause has been pending since May 7, 2008. After numerous continuances, many of which were at the request of the defendant, this case went to trial on March 1, 2010. After a two week trial, the jury reached a partial verdict, finding Tran not guilty of forty-nine counts of distributing drugs outside the scope of professional practice. The jury failed to reach a verdict on the remaining counts, which included several counts of illegal distribution to minors and a conspiracy count. Tran has filed two separate motions to dismiss, alleging double jeopardy, but the Court denied those motions. The Court believes that Tran's double jeopardy motions are without merit. The fact that the jury found that Tran was not guilty of illegally distributing drugs to certain people does not necessarily mean that he did not illegally distribute drugs to the remaining individuals named in the indictment.

This case is set for a second trial on June 1, 2010. However, Tran has now filed an interlocutory appeal and requested a stay. Pursuant to *United States v. Dunbar*, 611 F.2d 985 (5th Cir. 1980), the Court finds that Tran's request for a stay should be denied. Thus, the case

will proceed to trial on June 1, 2010.

IT IS THEREFORE ORDERED AND ADJUDGED that Nick Tran's Motion to Stay Proceedings Pending Interlocutory Appeal [350] is **DENIED**.

SO ORDERED AND ADJUDGED this the 17th day of May, 2010.

s/ Louis Guirola, Jr.

Louis Guirola, Jr.
United States District Judge